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No. 85-787

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

RUSSELL D. DAVES,
APPELLANT

V.

THE STATE BAR OF TEXAS,
APPELLEE

ON APPEAL FROM THE SUPREME COURT OF TEXAS

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Texas on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE STATE RULE INVOLVED AND THE NATURE OF THE CASE

A. THE RULE

This appeal concerns the validity of Disciplinary Rule 2-101(C) of the Rules Governing the State Bar of Texas reprinted in 1A Tex.Rev.Civ.Stat.Ann. Title 14 App. art 10 §9 (Vernon Supp. 1985) [hereinafter, DR 2-101(C)]. The text of DR 2-101(C) appears on page 3 of Appellant's Jurisdictional Statement. DR 2-101(C) requires that Texas attorneys who advertise their availability to perform legal services in a particular area of law must state whether they have received Certificates of Special Competence in those areas from the Texas Board of Legal Specialization.

The State of Texas has an organized program of specialization certification by application and examination.

The Texas Board of Legal Specialization was established by the State Bar of Texas to administer a program for recognition and regulation of specialization

in the law. The Board promulgates standards for qualification for a certificate of special competence in particular fields of law. These standards include a minimum length of time in the full-time practice of law, educational experience, examinations and a showing of substantial involvement in the field. The State Bar of Texas Plan for Recognition and Regulation of Specialization in the Law is contained in the Appendix of this Brief. Application to the Board for certification is voluntary. Thus, a certificate of special competence indicates expertise in an area of law and a requirement that lawyers publish information regarding certification is a means of informing the public of an attorney's expertise as measured by objective standards.

B. THE PROCEEDINGS BELOW

Appellant admitted in his answer to the trial court that he had placed a newspaper advertisement which stated that he performed uncontested divorces but did not include information as to his certification by the Texas Board of Legal Specialization as required by DR 2-101(C). Based upon Appellant's admission, Appellee filed a motion for summary judgment which was granted.

Appellant maintained in the trial court on appeal that DR 2-101(C) infringed upon his First Amendment rights. In his appeal to the Seventh Court of Appeals, Mr. Daves also argued that imposition of a six-month suspension was abuse of discretion. The Court of Appeals found that liability was clearly established but agreed with Mr. Daves' contention that the sanction was too harsh. The Court ordered the case remanded for a new trial.

Mr. Daves appealed to the Supreme Court of Texas, again urging that DR 2-101(C) is unconstitutional. Both parties fully briefed the issue. The Supreme Court of Texas disposed of Appellant's application for writ of error by ordering that it was refused with the notation, No Reversible Error. Appellant would have this Court believe that the Texas Supreme Court's action in this case is equivalent to the refusal of a writ of certiorari by this Court. This assertion that the Supreme Court of Texas did not consider this appeal is untrue. While no opinion was issued in connection with the Texas Supreme Court's decision, its significance can be determined by reference to Tex. R. Civ. P. 483 which provides in pertinent part, "In all cases where the Supreme Court is not satisfied that the opinion of the Court of Appeals in all respects has correctly declared

the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application with the notation 'Refused. No Reversible Error.'" Since the constitutionality of DR 2-101(C) is a dispositive issue in this case, the Supreme Court of Texas could not have ruled that there was "no reversible error" without passing upon this issue and finding that the rule is constitutional.

II.

ARGUMENT

This Case Presents No Substantial Question Not Previously Decided By this Court

Appellant admits that in the past eight years, this Court has addressed the issue of attorney advertising on several occasions. The decisions of this Court constitute a well developed body of law which clearly governs the case at bar.

Therefore, there is no substantial question to be decided by this Court. If the Court were to decide this case, the principles set forth in prior decisions would mandate an affirmance.

Attorney advertising is "commercial speech." Zauderer v. Office of Disciplinary Counsel, ____ U.S. ____, 105 S.Ct. 2265, 2275 (1985). Commercial speech is entitled to First Amendment protection but may be regulated by the states and federal government when a four prong test is met. That test, which was first set forth in Central Hudson Gas and Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980), is applicable to attorney advertising cases. See Zauderer v. Office of Disciplinary Counsel, ____ U.S. ____, 105 S.Ct. 2265 (1985); In Re R.M.J., 455 U.S. 191 (1982).

In applying the test set forth in Central Hudson for valid regulation of commercial speech, a court must answer the following questions:

1. Whether the speech concerns lawful activity and whether it is misleading.

2. Whether the asserted governmental interest is substantial.

3. Whether the regulation directly advances the governmental interest asserted.

4. Whether the regulation is more extensive than necessary to serve that interest.

While the state must satisfy all four prongs of the Central Hudson test when it seeks to prohibit speech, a less rigorous standard is employed when the state requires the inclusion of particular information in advertisements. The state need not show that its rule is

the least restrictive means of preventing consumer deception but that the disclosure requirements are reasonably related to the state's interest in preventing deception. Zauderer v. Office of Disciplinary Counsel, ____ U.S. ____, 105 S.Ct. 2265, 2282 (1985).

In attorney advertising cases, this Court has further defined the first element of the Central Hudson test: it is not whether the advertisement is misleading but whether the advertising is inherently likely to deceive or mislead. In Re R.M.J., 455 U.S. 191, 201 & 202 (1982).

The decisions of this Court clearly establish that in a case involving a disclosure requirement such as this one, the proper analysis is to determine whether the speech in question is likely to mislead, whether the state has a substantial interest in regulating it and

whether the state's regulation is reasonably related to the state's interest.

Potentially Misleading Nature of the Advertisement

Contrary to the statement in Appellant's brief, the issue of the potentially misleading nature of an advertisement such as his was not decided in his favor in Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

In that case, this Court was presented with three arguments against attorney advertising. The opponents of advertising contended that it would mislead the public "(a) because such services are so individualized with regard to content and quality as to prevent informed comparison on the basis of an advertisement, (b) because the consumer of legal services is unable to determine in advance just what services

he needs, and (c) because advertising by attorneys will highlight the irrelevent factors and fail to show the relevant factor of skill," Bates, supra at 372. In addressing the first argument, the Court stated that advertising the prices for routine legal services such as uncontested divorces, does not make the advertising misleading so long as the attorney does the necessary work at the advertised price. Bates, supra at 372-73. When viewed in context, it can be seen that the Court was not giving blanket approval to this form of advertising but was restricting itself to considering whether mentioning prices was misleading considering the unique and varied nature of legal work. Thus, this portion of the Bates opinion did not address the issue in this case, which is whether an attorney's advertisement listing a specific legal service is likely to

mislead the public with respect to that attorney's level of expertise.

The third argument against attorney advertising in Bates did involve the question of expertise. The Court admitted that this argument was not without merit. Rather than suppress all advertising for failing to provide a complete foundation on which to select an attorney, the Court determined that the better course would be to permit advertising, noting that, "of course, the bar retains the power to correct omissions that have the effect of presenting an inaccurate picture . . ." Bates, supra at 375. In view of the Texas program of certification of specialists, the requirement of DR 2-101(C) does no more than Bates required.

It is the position of the Supreme Court of Texas that advertising as to specific areas of law is likely to

mislead the public as to the level of a lawyer's expertise and therefore, it has promulgated DR 2-101 to require lawyers to provide information necessary to present an accurate picture. Other courts have agreed with this view. See Lovett and Linder, Ltd. v. Carter, 523 F.Supp. 903, 911 (D.R.I. 1981); Durham v. Brock, 498 F.Supp. 213, 223 (M.D. Tenn. 1980) aff'd 698 F.2d 1218 (6th Cir. 1982); In Re Johnson, 341 N.W.2d 282, 285 (Minn. 1983).

Appellant also argues that his advertisement could not be misleading because it contained no inaccurate statements of fact. In Zauderer, the attorney's advertisement stated that "if there is no recovery, no legal fees are owed by our clients." Zauderer v. Office of Disciplinary Counsel, ____ U.S. ____, 105 S.Ct. 2265, 2283 (1985). In itself, this was not an inaccurate statement.

However, this Court held that Ohio could require Mr. Zauderer to disclose that clients will have to pay costs even if their suits are unsuccessful. Id. The Court reasoned that consumers would be misled because they would not understand the difference between costs and fees. Thus, there is no requirement that there be inaccurate statements in commercial speech in order to regulate. As stated above, the test is whether the advertisement is likely to mislead. In R.M.J., 455 U.S. 191, 201 and 202 (1982); Durham v. Brock, 498 F.Supp. 213, 220 (M.D. Tenn. 1980) aff'd 698 F.2d 1218 (6th Cir. 1982).

Appellant argues that requiring the statement concerning Board Certification is unjustified because there should be a general presumption that all attorneys are competent to handle uncontested divorce cases. This argument miscon-

strues the issue, which is not whether all licensed attorneys are competent to obtain divorces or whether the public should presume that all attorneys are competent to do so. The issue is whether the public will perceive attorneys who advertise specific legal services as being highly skilled in the performance of those services. That the potential exists for some members of the public to form such an impression is self-evident: it is only logical to conclude that attorneys who list a specific service must be especially knowledgeable about that service.[1]

The State Bar contends that Mr. Daves' advertisement is likely to mislead the public as to his level of expertise.

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[1]Mr. Daves appears to be taking the position that the Board certification statement is especially unnecessary when

Substantial State Interest in Regulation

In Zauderer, the Court stated that the principal justification for extending

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the legal service advertised is to obtain uncontested divorces because performing that service requires very little skill. This characterization is incorrect. In all divorces, attorneys must draft a decree which disposes of the couple's property and sets forth child support obligations and visitation rights. Obviously, attorneys with greater knowledge of community property, taxation and family law will be better able to produce a decree which is both tailored to the clients' needs and is enforceable. Considering that in only 28% of cases involving child support orders are those obligations being met, enforceability is very important.

Mr. Daves' argument regarding skill in handling uncontested divorces overlooks another fact: that very often the parties disagree over some issue before the divorce is granted and the proceeding becomes adversary in nature. Unless the attorney plans to abandon such clients, he or she must possess all the skills necessary to try the case.

First Amendment protection to commercial speech is to provide consumers with information. Zauderer v. Office of Disciplinary Counsel, ___ U.S. ___, 105 S.Ct. 2265, 2282 (1985). The United States Supreme Court has recognized that the factor of skill is the information which the public should learn to assist them in their choice of an attorney. Bates v. State Bar of Arizona, 433 U.S. 350, 377 (1977). This Court also stated, "The public's comparative lack of knowledge, the limited ability of the professions to police themselves, and the absence of any standardization in the "product" renders advertising for professional services especially susceptible to abuses that the States have a legitimate interest in controlling." In Re R.M.J., 445 U.S. 191, 202 (1982). Thus, it is clear that Texas has sufficient interest to require that attorneys include infor-

mation about their expertise in their advertisements.

Reasonable Relationship of State's Interest to Disclosure Requirement

In determining whether there is a rational relationship between a regulation and the achievement of a legitimate state purpose, the Court must answer two questions: 1) does the regulation have a legitimate state purpose? and 2) was it reasonable for the lawmakers to believe that the regulation would promote that purpose. W. & S. Life Insurance Co. v. State Board of Equalization, 451 U.S. 666, 669 (1981). The legitimacy of the state purpose in promulgating DR 2-101(C) has been demonstrated in the previous section of this brief. As to the second part of the test, it does not require that the regulation be perfect, Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 316 (1976) or that

the regulation be completely successful in accomplishing the stated goals. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981).

Thus, the question is whether the Texas Supreme Court, in promulgating DR 2-101(C), could have reasonably believed that this rule would result in preventing the public from being misled about the expertise of advertising lawyers. DR 2-101(C) requires that an attorney who advertises in a specific area of law report an objective fact: whether he is certified by the Texas Board of Legal Specialization. Clearly, Board certification qualifies a practitioner as an expert in that particular field. As established earlier, this is the type of information which will be useful to members of the public in their selection of an attorney. It is also information which an attorney already knows about himself.

Therefore, as a practical matter, complying with the disclosure requirement poses no great difficulties. There is a reasonable relationship between the goal of giving the public an accurate impression of an advertising lawyer's expertise and DR 2-101(C).

Mr. Daves contends that the rule in question will not accomplish the stated objective, but will lead the public to the erroneous conclusion that attorneys who are not Board certified are unqualified. He further states that DR 2-101(C) will inevitably result in a sharp decline in advertising and in cost competition.

Mr. Daves is speculating about the effect of the disclaimer. An equally plausible conclusion would be that people who want inexpensive divorces will seek out attorneys who are not certified because they will believe that those attorneys will charge lower fees.

The scenario described by Mr. Daves is illogical and is not in fact what is occurring in Texas. This can be seen by comparing the relative number of Board certified attorneys with those who are not and by observing the number of attorney advertisements in Texas since the promulgation of DR 2-101(C).

As of September of 1985, fewer than 7% of Texas lawyers were certified by the Texas Board of Legal Specialization in the nine areas in which certification is available. The Texas Lawyer, at 1 (September 11, 1985). The percentage of lawyers certified as family law specialists is less than 1%. Id. If the lawyers in each category chose to advertise in proportion to their relative numbers, ninety-three out of one hundred advertisements would be those of non-Board certified lawyers and ninety- nine out of hundred would be those of lawyers who are

not certified in family law. Although there are no figures available on the number of lawyers in each category who do advertise, a quick glance though the Yellow Pages of any Texas city reveals that there are far more non-certified lawyers advertising than there are certified lawyers. It is unreasonable to conclude that consumers would believe that only the few Board certified lawyers are competent and that all the rest are unqualified. Looking through the Yellow Pages of the past three years will also reveal that since the promulgation of DR 2-101(C), lawyer advertising has increased, and that the increase is attributable to non-certified as well as certified lawyers.

Mr. Daves has chosen to characterize what is obviously a disclosure requirement as a prohibition on speech. The truth is that DR 2-101(C) requires that

attorneys who advertise convey a single fact to the public. It is apparent that complying with the rule is not burdensome. There is no prohibition on the inclusion of additional information regarding education and other qualifications. Tex. Professional Ethics Comm. Op. 418 published in 47 Tex. B.J. 1118 (October 1984). Thus, the Texas rule does not prohibit speech, but encourages it, thereby providing the public with a means of making a well informed choice in their selection of an attorney.

CONCLUSION

This Court's prior decisions clearly set forth the test to be employed in determining whether a state may permissibly require attorneys to disclose information in their advertisements. Therefore, there is no substantial federal question before the Court in this case. Using that test to evaluate the rule in ques-

tion leads to the conclusion that it does not infringe upon attorneys' First Amendment rights.

WHEREFORE, PREMISES CONSIDERED, this appeal should be either dismissed or affirmed. If the Court determines that an appeal is not proper in this case and treats it as a petition for writ of certiorari, the petition for writ of certiorari should be denied for the reasons stated herein.

Respectfully submitted,

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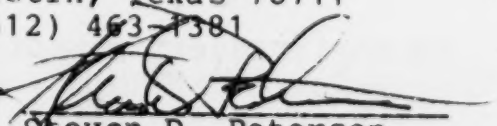
By 
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CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Motion to Dismiss or Affirm has been served on David Vladeck, Public Citizen Litigation Group, Suite 700, 2000 P Street, N.W., Washington, D.C. 20036, by delivery of three true and correct copies to him by certified mail, return receipt requested, on the 11th day of December, 1985.

Steven D. Peterson

STATE BAR OF TEXAS

TEXAS PLAN FOR RECOGNITION AND REGULATION

OF

SPECIALIZATION IN THE LAW

[redacted]

APPENDIX

TEXAS PLAN FOR RECOGNITION AND REGULATION OF SPECIALIZATION IN THE LAW

I.
Purpose and Objective

To promote the availability, accessibility and quality of the services of lawyers to the public in particular fields of the law is to serve the public interest and advance the standards of the legal profession. That is the purpose and objective of the following program for the recognition and regulation of those lawyers who have special competence in a particular field of the law.

II.
Texas Board of Legal Specialization

The State Bar of Texas hereby establishes a Texas Board of Legal Specialization (hereinafter referred to as the "Board"). The Board shall be composed of nine members appointed by the President of the State Bar of Texas, with the approval of its Board of Directors. The Board shall be representative of the legal profession in Texas and shall consist only of licensed lawyers, some of whom specialize and some of whom are in general practice. All members shall hold office for three years and until their successors are appointed. Members shall be appointed to staggered terms of office, and the initial appointees shall serve as follows: three members shall serve until the June 30 next following their appointment; three members shall serve until the second June 30 following their appointment; and three members shall serve until the third June 30 following their appointment. Any vacancy shall be filled in the manner provided for original appointments. All members of the Board shall be eligible for reappointment but for no more than one additional term.

III.
Jurisdiction of the Board

Subject to the continuing jurisdiction of the Board of Directors of the State Bar of Texas, the Board shall have general jurisdiction of all matters pertaining to specialization in the practice of law and shall have the authority and duty to:

A. Administer the program for the recognition and regulation of specialization in the law.

B Upon appropriate petition, define and designate fields of law in which certificates of special competence may be granted and provide procedures by which such fields may be determined, redefined or eliminated.

C Make and publish reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certificates of special competence to lawyers in defined and designated fields of law, after public hearings on due notice have been held.

D Provide procedures for the investigation and testing of the qualifications of applicants and certificate holders and to award certificates of special competence in a form approved by the Board.

E. Make and publish reasonable and nondiscriminatory standards for continuing proficiency, recertification or renewal of certificates of special competence after public hearing on due notice.

F Encourage law schools, the State Bar Committee on Continuing Legal Education, local bar associations and other agencies of continuing legal education to develop and maintain a program of legal education and continuing legal education to meet the standards prescribed by the Board.

G. Cooperate with other agencies of the State Bar of Texas in establishing and enforcing standards of professional conduct necessary for the recognition and regulation of specialization in the law in the manner determined by the Board.

H. Cooperate with the Special Committee on Specialization of the American Bar Association and with the agencies in other states engaged in the regulation of legal specialization.

I. Report as required, but at least annually, to the Board of Directors of the State Bar and to advise such Board concerning the appointment of advisory commissions.

J. Make and publish standards, rules and regulations to implement this authority, all in accordance with the limitations on the power of the Board and the minimum standards prescribed by the Board.

IV.
Limitations on Power of the Board

The following limitations on the power of the Board are established:

A. No standard shall be approved which shall in any way limit the right of a certificate holder to practice law in all fields. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is certified in a particular field of law.

B. No lawyer shall be required to be certified before he can practice law in any particular field of the law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is not certified as a specialist in any particular field.

C. All requirements for and all benefits to be derived from certification are individual and may not be fulfilled by or attributed to a law firm of which the specialist may be a member.

D. Participation in the plan shall be on an entirely voluntary basis.

E. The limit on the number of fields of law in which a lawyer may be certified shall be determined by such practical limits as are imposed by the requirement of "substantial involvement" and such other standards as may be established by the Board.

F. No rules or standards shall be adopted in contravention of the rules of the State Bar of Texas.

V.
Advisory Commissions

Advisory Commissions to the Board shall be established for each field of law in which certificates of special competence are to be issued. These commissions shall advise and assist the Board in carrying out its objectives and in the conduct and development of the program for the recognition and regulation of specialization in law. Standards for the issuance of certificates of special competence shall be established by the Board, but it will be advised in this and other relevant matters by the advisory commission for each field of law. The advisory commission for each field of law shall be charged with actively administering the program in its particular field in cooperation with and under the general policy guidance of the Board.

Members of the advisory commission shall be appointed by the Board in such number and for such terms as the Board shall direct.

A lay person advisory commission to the Board shall be established composed of nine members appointed by the Board of Directors of the State Bar of Texas. Such commission shall have equal status with other advisory commissions so that the Texas Board of Legal Specialization shall receive formal input as to the public's legal needs and how the public can be served through the specialization program.

VI.
Minimum Standards for Certification

The minimum standards for certification under this program are prescribed below. Each advisory commission may recommend, and the Board may establish, additional or higher standards.

A lawyer (1) who is an active member in good standing of the State Bar of Texas; and (2) who currently maintains an office in the State of Texas; and (3) who meets the requirements prescribed by the Board, shall be granted a certificate in a form approved by the Board which shall certify, under the name of the Board, the lawyer's special competence in a particular field of law designated by the Board as a field of law in which certificates of special competence may be granted.

A. Requirements for qualifying for certification without examination are:
   1. A minimum of ten (10) years of actual practice of law on a full time basis.
   2. A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of special competence and substantial involvement in the particular field of law for which certification is sought during a continuous five-year, or other reasonable period, (but not less than three years) immediately preceding certification.
   3. Payment of any fees required by the Board.

   Certification without examination may be granted only within a period of two years after the date on which the plan for certification of a particular field of law is made effective by the Board.

B. Requirements for qualifying for certification by examination are:

1. A minimum of five years of actual practice of the law on a full time basis.
2. A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of a substantial involvement in the particular field of law for which certification is sought for such reasonable period of time immediately preceding certification as may be determined by the Board after advice from the appropriate advisory commission.
3. A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of such educational experience in the particular field of law for which certification is sought as the Board deems advisable.
4. Passing a written examination applied uniformly to all applicants before certificaton to demonstrate sufficient knowledge, proficiency and experience in the field of law for which certification is sought and in the various fields of law relating to such field as is necessary to justify the representation of special competence to the legal profession and to the public.
5. Passing an oral examination, if determined to be advisable by the Board, with the advice of the appropriate advisory commission.
6. Payment of any fee required by the Board.

"Substantial involvement", as used in these standards, shall be defined by the Board as to each particular field of law from a consideration of its complexity and distinction from other fields, and from consideration of the time and extent of necessary devotion to the particular field of practice.

VII.
Standards for Recertification

No certificate of special competence shall be issued or renewed for a period longer than five years, and the term of any certificate shall be stated on its face.

Each advisory commission may recommend, and the Board may establish additional requirements and safeguards to insure

the continued proficiency of any holder of a certificate of special competence, but recertification shall be required at least every five years under the following minimum standards:

A. A satisfactory showing, as determined by the Board with the advice of the appropriate advisory commission, of a substantial involvement in the particular field of law for which certification was granted, during the period of certification,

B. A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of such continuing educational experience in the field of law for which certification was granted, during the period of certification as the Board deems advisable, and

C. The payment of any fee prescribed by the Board. In the event a lawyer's previous certificate is not effective at the time application is made for recertification or he fails to meet the requirements for recertification, he shall be entitled to seek certification by examination as provided in Section VI above.

VIII.
Revocation of Certification

A certificate of special competence may be revoked by the Board if the program for certification in that field is terminated or if it is determined after hearing on appropriate notice that:

A. The certificate was issued contrary to the rules and regulations of the Board of the State Bar of Texas, or

B. The certificate was issued to a lawyer who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the Board, or

C. The certificate holder has failed to abide by all rules and regulations covering the program promulgated by the Board as amended from time to time including any requirement or safeguard for continued proficiency, or

D. The certificate holder has failed to pay any fee established by the Board, or

E. The certificate holder no longer meets the qualifications established by the Board.

Upon revocation of the certificate, the certificate holder shall immediately return the certificate to the office of the Executive Director.

IX.
Right of Appeal

A lawyer who is refused certification, recertification or whose certificate is revoked by the Board, or any person who is aggrieved by a ruling or determination of the Board, shall have the right to appeal the ruling of the Board to the Board of Directors of the State Bar of Texas under such rules and regulations as it may prescribe. The exhaustion of this right of appeal shall be a condition precedent to judicial review.

X.
Responsibilities of Certified Lawyers

A. When a client is referred to a lawyer who is certified under this program on a matter within the lawyer's specialty field, the lawyer so certified shall not take advantage of his position to enlarge the scope of his representation. In addition to any requirements of the Canons of Ethics, the lawyer so certified shall encourage a referred client to return to the referring lawyer for the handling of future legal needs.

B. Special Controls for Program.
   1. Each participant in the program, as a part of the application for participation in the program, shall agree to abide by all rules and regulations promulgated by the Board covering the program as amended from time to time.
   2. During the operation of the program, no individual lawyer or group of lawyers shall have any vested rights thereunder.

C. Rules of Professional Conduct
   During the operation of this program, any lawyer holding a current certificate of special competence shall be entitled to the following:
   1. To state in recognized and conventional legal directories or law lists that the lawyer is certified by the Board in a particular field in the following words: "Board Certified (e.g., Labor Law) — Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.
   2. To state in a notice mailed to lawyers, clients, former

clients, personal friends and relatives that the lawyer is certified by the Board in a particular field in the following words: "Board Certified (e.g., Family Law) — Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.

3. To state in the classified section of telephone directories that the lawyer is certified by the Baord in a particular field in the following words: "Board Certified (e.g., Criminal Law) — Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.
4. To state on a professional card that the lawyer is certified by the Board in a particular field in the following words: "Board Certified (e.g., Civil Trial Law) — Texas Board of Legal Specialization". Said information is also permitted on the letterhead under the individual listing of the attorney on the margin of the stationery, but not under the styled name of the firm at the top of the letterhead. In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the Canons of Ethics.
5. To display in the lawyer's office the certificate issued by the Board.

No statement of certification shall be permitted other than as above specifically described unless permitted by the rules of the State Bar of Texas, including the Canons of Ethics.

XI.
Financing of the Program

A fee as established by the Board shall be charged for filing an application for certification or recertification. An additional fee may be established by the Board for the granting of the certificate payable in annual installments or in other manner determined by the Board. Said fees shall be reasonable and in an amount as may be necessary to defray the expense of administering the program, and may be adjusted from time to time.

XII.

Retained Jurisdiction of Supreme Court

The jurisdiction of the Board shall be limited to ten fields of law: Criminal Law, Labor Law, Family Law, Estate Planning and Probate Law, Civil Trial Law, Personal Injury Trial Law, Immigration and Nationality Law, Real Estate Law, Tax Law, and Consumer Bankruptcy Law and to the development and operation of the program in the recognition and regulation of specialization in the law, provided, however, that the number and type of fields included in the program and the jurisdiction of the Board may be enlarged, altered, or terminated from time to time by the Supreme Court of Texas.